THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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W.P.No. 25468 of 1996

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% 09-03-2006

Between:

Duddukuri Satyanarayana and another

…Petitioners

A n d

The Mandal Revenue Officer,

Bhadrachalam Mandal, Khammam District

and another

…Respondents

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! Counsel for the Petitioners: Sri P.V.Ramana

^ COUNSEL FOR THE RESPONDENTS: G.P. for Social Welfare

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> Head Note:

? CITATIONS:

1987 (2) ALT 383 DB

AIR 1982 SC 1397

1975 (1) APLJ

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JUDGMENT:

This writ petition raises an important question of law,
viz., whether the remedy and relief, under Section 5 (c) of the Andhra Pradesh (Scheduled Areas Ryotwari Settlement) Regulation, 1970 (for short 'the Regulation'), is available to an individual, whose appeal, under Section 9(3) thereof, is rejected.

The Regulation provides for the grant of ryotwari pattas, in respect of all cultivable lands, forming part of estates, situated in the Scheduled Areas. The petitioners state that they are the owners of land in Sy.Nos.37/1 and 2, admeasuring about 6 hectares, situated at Gundala village of Bhadrachalam Mandal. Section 9 of the Regulation enables the Settlement Officer, either *suo motu,* or an application made by the interested persons, to initiate the proceedings for grant of ryotwari pattas. The Settlement Officer, Bhadrachalam, initiated *suo motu* proceedings, as regards the lands claimed by the petitioners.

After hearing the petitioners herein, and on examination of the record, the Settlement Officer passed an order, dated
17-03-1978, disallowing the claim of the petitioners, under Section 7(1) of the Regulation. Aggrieved thereby, the petitioners filed an appeal under sub-section (3) of Section 9 of the Regulation, before the Director of Settlements, A.P., Hyderabad. The appeal was rejected on 12-08-1983. Thereafter, the petitioners preferred a further appeal, under that very provision, before the Commissioner of Survey and Settlements, the 2nd respondent herein; with a delay of 900 days. The 2nd respondent passed an order dated 05-01-1988, refusing to condone the delay, and

thereby rejected the further appeal. Petitioners filed W.P.No.19042 of 1988, before this Court and it was also dismissed on 26-12-1988.

The petitioners approached the 2nd respondent by filing a revision, invoking his power under Section 5 (c) of the Regulation. Through order dated 17-05-1996, the 2nd respondent refused to entertain the application. Hence, this writ petition.

Sri P.V.Ramana, learned counsel for the petitioners submits that the power of the 2nd respondent, under Section 5 (c) is very wide, and the fact that a further appeal, filed under Section 9 (3) of the Regulation was rejected; ought not to have been taken as a basis, to dismiss the revision. He contends that the nature of exercise of power, in an appeal, is totally different from the one, in a revision. He places reliance upon the judgment rendered by a Division Bench of this Court in ***Mirza Muzamdar Hussain v.Dodla Bhaskara Reddy***.

Learned Government Pleader for Social Welfare, on the other hand, submits that once the further appeal, preferred under Section 9(3) of the Regulation, was rejected, and the order of rejection was confirmed by this Court, it was not open to the petitioners, to move a revision under Section 5(c) of the Regulation. He contends that the *suo motu* power under Section 5 (c) is, for regulation and supervision of the proceedings, and it cannot be treated as a remedy, for any aggrieved person.

The primary authority, under the Regulation, namely, the Settlement Officer, initiated *suo motu* proceedings, and disallowed the claim of the petitioners, for grant of ryotwari patta. A finding was recorded to the effect that the petitioners failed to establish the ingredients of Section 7 of the Regulation. Thereupon, the petitioners availed the remedy of appeal under sub-section (3) of Section 9, before the Director of Settlements. The appeal was also rejected. That very provision provided for a further appeal to the Board of Revenue, which has since been constituted as the 2nd respondent herein. The provision reads as under:

> "**Sec. 9(3)**: An appeal shall lie to the Director against the decision of the Settlement Officer and to the Board of Revenue against the decision of the Director within sixty days from the date of communication of the order or decision appealed against and the decision of the Board of Revenue shall be final and shall not be questioned in any court of law".

The further appeal was presented with a delay of 900 days. The 2nd respondent passed an order dated 05-01-1988, refusing to condone the delay, and thereby, rejected the appeal. W.P.No.19042 of 1988 was filed by the petitioners was also dismissed by this Court, on 26-12-1988. About eight years thereafter, the petitioners filed a revision under Section 5 (c) of the Regulation, before the 2nd respondent. After referring to the various developments that have taken place, the 2nd respondent rejected the revision. Therefore, it needs to be seen, as to whether it was competent for the petitioners, to invoke the jurisdiction of the

2nd respondent, under Section 5(c) of the Regulation, and whether the impugned order suffers from any irregularity or illegality.

It is beneficial to extract Section 5 of the Act, and it reads as under:

"**Sec.5**: Power of control of the Board of Revenue:-

The Board of Revenue shall have power.—

a. to superintend the survey and settlement operations in the Scheduled Areas to which this Regulation applies;

b. to issue lawful instructions for the guidance of the Director and the Settlement Officers; and

c. to revise or cancel suo motu or on an application any of the orders, decisions or proceedings of any Settlement Officer or the Director;

Provided that the Board of Revenue shall not pass any order adversely affecting any party unless such party has had an opportunity of making a representation".

Before undertaking discussion of the matter, on merits, certain aspects, need to be clarified. The refusal by a statutory authority to condone the delay in presentation of an appeal or revision cannot be treated as the final adjudication of the matter. The rejection of an application, to condone the delay, cannot be said to have resulted in final exhaustion of the remedy. Reference, in this regard, been made to the judgment of the Supreme Court in ***Rani Choudhary v. Suraj Jit Choudhury***. It was held that where an appeal is dismissed for default, or where the dismissal resulted,

on account of abatement, or where it is dismissed by barred by limitation, the *doctrine of merger* does not get attracted.

Secondly, a distinction needs to be maintained, between the power of superintendence or, over-all control of a superior authority, on the one hand, and the

remedies of a citizen, in the form of appeals, revisions etc., on the other hand. In the case of the former, the exercise of power would depend upon the discretion of the authority, and a citizen cannot invoke it, as of right. The applications made by the aggrieved persons, while invoking such powers, would constitute the basis and source of information, for the concerned authority, but cannot cast an obligation, on him, to undertake adjudication. Appeals and revisions, on the one hand, create and vest a right, in the aggrieved parties, to get their grievance, against an order passed by an inferior authority, examined and adjudicated, by the superior authorities.

In the instant case, it is no doubt true that the further appeal preferred by the petitioners, under Section 9(3) of the Regulation, was rejected by the 2nd respondent, on the ground that it was time barred, and the order of rejection was affirmed by this Court,
in a writ petition. Technically speaking, it cannot be said that there was any merger of the orders, at the level of the 2nd respondent,
vis-à-vis the proceedings under Section 9. Still, it is difficult to accept, that the petitioners can file a revision under Section 5 (c). As observed earlier, Section 5 (c) is not an independent source of revision, from the point of view of an aggrieved party. If read in the context of Clauses (a) and (b), of that Section, it is a form of exercise of administrative control. However, it is for the 2nd respondent, to feel the necessity of undertaking a revision, of the orders of inferior authorities, either *suo motu,* or, where he is fed with necessary information, in the form of application by an aggrieved party. The cumulative effect would be, that the discretion of the 2nd respondent, in exercising the power under Section 5(c), is far wider, and he is not to be guided by the principles, that govern the exercise of powers, under regular appeals, under Section 9.

The observations made by a Division Bench of this Court in ***Mirza Muzamdar Hussain's*** case (1 supra), are, in a slightly different context. In that case, which arose under the A.P (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948, the appellant was granted the patta by the Settlement Officer, and a revision, filed by the Tahsildar against the order of Settlement Officer, was dismissed by the Director of Settlements, on the ground that it was time barred. At a later point of time, the Director of Settlements invoked his *suo motu* powers under the same provision i.e. Section 5, and cancelled the patta of the appellant, on finding that the

land in question was the property of a Wakf. The writ petition, filed against the orders of the Director of Settlements, was allowed, on the ground that once he has exercised powers of appeal and rejected it, on the ground that it was time barred; he became *functus officio*. In the writ appeal, the Division Bench did not agree with that proposition. After referring to an earlier judgment, rendered by another Division Bench, in ***K.Venkata Reddy v. Director of Survey***, it was held that it was competent for the Director of Settlements, to invoke his *suo motu* powers, though he rejected an appeal, in relation to the very land, on the ground of limitation.

There is no doubt, broad similarities exist, between the case on hand, and the one, decided by the Division Bench. However, in the ultimate analysis, it emerges that the authority, which rejected the appeal, on earlier occasion, on the grounds of limitation; has exercised *suo motu* powers of the very same provision; whereas in the instant case, the petitioners, who lost their appeal under Section 9 before the 2nd respondent, wanted that very authority, to exercise *suo motu* powers of revision. It has already been observed that authority vested with *suo motu* powers cannot be compelled to exercise them, particularly, when they had dealt with the matter as an appellate authority. It is a different thing that he chooses to exercise such powers, on his own accord, though he dealt with the matter on earlier occasion, in a regular revision.

Even assuming that there is any possibility, for treating the *suo motu* powers of revision, under Section 5(c), as a regular remedy of revision, there are more reasons than one, on account of which, the petitioners disabled themselves for availing it. Firstly, when their appeal itself was dismissed on the ground that there was a delay of 900 days, they invoked the power of the 2nd respondent under Section 5 (c), after a further delay of about 8 years. Secondly, there was no representation on behalf of the petitioners, before the 2nd respondent. The cumulative effect is that, the 2nd respondent was left with no alternative, except to reject the revision.

Hence, this Court does not find any basis to interfere with the impugned order. The Writ Petition is accordingly dismissed. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.09-03-2006

Note:

L.R. copy to be marked.

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